

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

SAM LEE
Clinton County, IA

ADMINISTRATIVE CONSENT ORDER
NO. 2009-AFO-03

TO: Sam Lee
2597 312th Avenue
DeWitt, Iowa

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Sam Lee for the purpose of resolving water quality violations. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Bert Noll, Field Office 3
Iowa Department of Natural Resources
1023 West Madison Street
Washington, Iowa 52353-
Phone: (319) 653-2135

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-8563

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative consent order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III, Part 1 and Iowa Code Chapter 459 and the rules adopted or permits issued pursuant thereto and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties.

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III. STATEMENT OF FACTS

1. Sam Lee owns a hog confinement facility in Clinton County, Sharon Township, Section 12. According to an MMP (Manure Management Plan) submitted in 2003, the site had capacity for 1600 head of finishers. It was later determined that the buildings were built pre 1985 and therefore the site is not required to submit an MMP to the DNR.

2. On August 18, 2008, DNR Field Office 6 received an anonymous complaint stating there was a manure spill at a hog facility in Clinton County, Sharon Township, Section 12. Environmental specialists Brian Lee and Bert Noll investigated the complaint and learned that the facility was owned by Sam Lee. Mr. Noll contacted Mr. Lee by telephone to acquire permission to enter the site. Mr. Lee stated he was not aware of any spills at the site but that he does not visit the site often. Mr. Lee instructed Mr. Noll to contact Terry Harmon, site manager, for further assistance. Brian Lee and Mr. Noll investigated the site and observed the building pits full and overflowing with manure. The leaking manure flowed into the tributary to Prairie Creek below the building site. Mr. Noll observed several swaths of dead grass leading to the creek and several dead trees where the manure eventually settled and began to enter the creek. The weather had been dry for some time so manure was not actively flowing into the creek at the time of the investigation. Mr. Harmon stated the reasons for the manure releases were broken plastic pump out tubes and broken water lines. Mr. Noll informed Mr. Harmon that the manure was to be contained at all times between periods of application and that he needed to collect all manure possible and pump the pits down to a level where they would not discharge. Mr. Harmon indicated that he would begin cleanup immediately. Brian Lee and Mr. Noll collected field and lab samples upstream from the creek at the source of the discharge and downstream of the point of entry of manure. The field and lab results were as follows:

Field Samples	Ammonia	Dissolved Oxygen	pH	Temperature
Upstream	1.2	8-10	7	74
Source	1	6	7-8	63
Downstream	>10	4	9	63

Lab Samples	Biochemical Oxygen Demand (mg/L)	Fecal (/100ml)	Total Suspended Solids (mg/L)	Ammonia (mg/L)
Upstream	<2	3,300	8	.3
Source	550	1,800	10	26
Downstream	250	12,000	270	16

3. On August 20, 2008, Mr. Noll contacted Mr. Harmon to check on the progress of cleanup. Mr. Harmon indicated that he had scraped up most of the manure on the ground

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surrounding the buildings. He also stated that he had hired a neighbor to pump the pits down and he would be doing so on August 22, 2008. In the meantime he stated that he plugged all of the pipes where manure had been leaking to stop further release.

4. On August 22, 2008, Mr. Noll conducted a follow-up visit and observed that the areas where leaking occurred were plugged up and the release temporarily stopped. The pit levels, however, did not appear to have decreased.

5. On August 26, 2008, Mr. Noll conducted another follow-up visit. Mr. Noll again observed that the pit level had not decreased.

6. On August 27, 2008, Mr. Noll contacted Mr. Harmon to check on the progress of pumping the pits down. Mr. Harmon indicated that the pits had been partially pumped down that day and would be pumped down further in the following days. He also indicated that some of the hogs had been moved out of the buildings and that the owner's plan was to remodel the buildings.

7. On August 29, 2008, a Notice of Violation letter was issued to Sam Lee for failure to contain manure, surface water quality violations, prohibited discharge, and failure to notify of a manure release.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.186 and 567 IAC 62.1(1) state that a pollutant shall not be disposed of by dumping, depositing, or discharging such pollutant into any water of the state except that this section shall not be construed to prohibit the discharge of adequately treated sewage, industrial waste, or other waste pursuant to a permit issued by the Director. DNR Field Office 6 found evidence that manure from Mr. Lee's facility was discharged to a tributary of Prairie Creek.

2. 567 IAC 65.2(3) states the minimum level of manure control for a confinement feeding operation shall be the retention of all manure produced in the confinement enclosures between periods of manure application. In no case shall manure from a confinement feeding operation be discharged directly into a water of the state or into a tile line that discharges to water of the state. Manure from Mr. Lee's confinement facility was leaking from all buildings at several different points. As a result, manure discharged to a nearby tributary to Prairie Creek. The above-facts indicate a violation of this provision.

3. 567 IAC 61.3(2) states that surface waters, including general use and designated use waters, shall be free from floating debris, oil, grease scum and other floating materials attributable to wastewater discharges or agricultural practices in amounts sufficient to create a nuisance; and such waters shall be free from materials attributable to wastewater discharges or agricultural practices producing objectionable color, odor, or aesthetically objectionable conditions. Field and lab analysis results of water samples collected during the investigation indicated the presence of animal wastes, best exemplified by the relatively high

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concentration of ammonia in the creek. It also appeared that the manure had been discharging to the nearby creek for an extended amount of time. The above-facts indicate a violation of this provision.

4. 567 IAC 65.5(1)"b" provides the DNR may evaluate any animal feeding operation to determine if manure from the operation is causing or may reasonably be expected to cause a violation of state water quality standards. 567 IAC 65.5(2)"b" provides that if DNR's evaluation determines that the manure from an animal feeding operation is causing or may reasonably be expected to cause pollution of a water of the state or a violation of the state water quality standards, the operation shall institute necessary remedial actions to eliminate the conditions if the operation receives a written notification from DNR of the need to correct the conditions.

V. ORDER

THHEREFORE, the DNR orders and Sam Lee agrees to do the following:

1. Mr. Lee shall pay a penalty of \$3,000.00 within 30 days of the date from which the Director signs this administrative consent order;
2. Mr. Lee shall immediately clean up manure from the confinement pits and prevent all future releases; and
3. Pursuant to the DNR's evaluation noted in Section IV. Paragraph 3, Mr. Lee shall submit an annual MMP to DNR Field Office 6 to ensure proper manure application.

VI. PENALTY

1. Iowa Code sections 459.603 and 455B.191 authorize the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission (Commission) to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC Chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$3,000.00. The administrative penalty is determined as follows:

Economic Benefit – Mr. Lee saved time and money by allowing manure from the confinement buildings to overflow for an extended period of time. Mr. Lee avoided the cost

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of properly land applying the manure by either hiring someone to do it or to obtain the equipment. Based on the above considerations, \$1,000.00 is assessed for this factor.

Gravity of the Violation – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Allowing manure to discharge to a water of the state is a water quality violation and can cause serious harm to the aquatic life therein. This manure release appeared to have been ongoing for a lengthy amount of time judging by the several swaths of dead grass leading to the creek and the several dead trees where the manure eventually settled and began to enter the creek. Elevated downstream ammonia and fecal levels also indicate an adverse impact to the water quality and inhabitants of the creek for an equally lengthy period of time. Based on the above considerations, \$1,000.00 is assessed for this factor.

Culpability – Sam Lee has a duty to remain knowledgeable of the DNR's requirements and to be alert to the probability that his conduct is subject to DNR's rules. Proper handling of manure and installation of adequate control structures could have prevented this discharge of manure to a water of the state. A high degree of negligence exists in this case as the ongoing manure release went on for a lengthy amount of time. While Mr. Harmon was cooperative in scraping the yard and berming areas of the facility were leaking occurred, the pit levels were not lowered during the two follow-up visits. Based on the above considerations, \$1,000.00 is assessed for this factor.

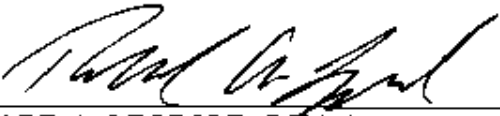
VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Sam Lee. For that reason Sam Lee waives his rights to appeal this administrative consent order or any part thereof.

VIII. NONCOMPLIANCE

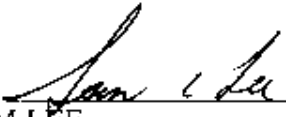
Failure to comply with this administrative consent order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191. Compliance with Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order.

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RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 29 day of
Jan, 2009.



SAM LEE

Dated this 22 day of
Jan, 2009.

Clinton County Files; Kelli Book; Bert Noll; EPA; VIII.D.1a